

NO. **89-1792**

FILED

APR 27 1989

**JOSEPH F. SPANOL, JR.
CLERK**

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

HAROLD I. POLLACK,

Petitioner

vs.

EDWARD G. GRUIS AND EUGENE L. KRIZEK

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO
THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

HAROLD I. POLLACK
P.O. Box 115
Basye, Va. 22810
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Pro se petitioner

41

QUESTIONS PRESENTED

1. Is summary judgment appropriate:

- (a) If arguments and opinions of movants' counsel are irrelevant to the case as filed with regard to issues of law, and where moving party has engaged in misconduct to confuse court as to issues?
- (b) If failure of movants to appear at a pre-trial conference avoided scheduled trial, delayed trial, and gave leave for respondents to submit a 61 page motion for summary judgment which deceitfully misstated and misrepresented the facts and issues filed in the complaint?
- (c) If, at hearing for cross-motions for summary judgment, respondents' counsel, a former deputy D.C. corporation counsel and member of the Judicial Conference of the District of Columbia, biased the court by

citing his experience to mislead court after introducing a legal precedent on tenant rights to mislead court into believing that the issues in the case were compliance with tenant rights law and assignment of rights to purchase real property, not with breach of contract and not for breach of contract with regard to commissions and fees as filed in Complaint?

2. Was it appropriate for the trial court to deny a motion to alter the judgment, without a hearing, when the motion cited misconduct and the response, by footnote, threatened petitioner's counsel who filed Complaint and counsel who filed opposition to summary judgment with Rule 11 violations, prejudicing petitioner by leaving him without counsel?

3. Is summary affirmance appropriate:

(a) If based on a motion which was substantively made only in response to a motion for summary reversal based on intrinsic fraud which affirmance motion avoided in violation of the appellate court's rules? |

(b) Without an opinion?

(c) Without a hearing considering intrinsic fraud was cited with particularity and unopposed?

4. Is denial of a petition for rehearing appropriate if the petition cites, with particularity, misconduct?



PARTIES TO THE PROCEEDINGS

1. HAROLD I. POLLACK
2. CAPITAL CREATIONS, INC.
3. EDWARD G. GRUIS
4. EUGENE L. KRIZEK



TABLE OF CONTENTS

QUESTIONS PRESENTED	i
LIST OF PARTIES	iv
TABLE OF CONTENTS	v
TABLE OF AUTHORITIES	v
OPINIONS BELOW	2
GROUND'S FOR JURISDICTION	3
STATUTES INVOLVED	4
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	25
MISCONDUCT	26
CONCLUSION	30
APPENDICES (DECISIONS BELOW)	
1. D.C. SUPERIOR COURT	i
2. D.C. SUPERIOR COURT	ii
3. D.C. COURT OF APPEALS	iii
4. D.C. COURT OF APPEALS	iv

TABLE OF AUTHORITIES

Federal Rules of Civil Procedures, Rule 56



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

HAROLD I. POLLACK,

Petitioner

vs.

EDWARD G. GRUIS AND EUGENE L. KRIZEK

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO
THE DISTRICT OF COLUMBIA COURT OF APPEALS**

Petitioner Harold I. Pollack
respectfully prays that a writ of
certiorari issue to review the judgment
and order of the District of Columbia
Court of Appeals, entered on 20 November
1989 and 29 January 1990, respectively.



OPINIONS BELOW

The order of the Superior Court of the District of Columbia dismissing the Complaint is reprinted in the appendix hereto, Appendix 1.

The order of the Superior Court of the District of Columbia denying plaintiffs' Motion to Alter the Judgment is reprinted in the appendix hereto, Appendix 2.

The Judgment for the District of Columbia Court of Appeals affirming the judgment is reprinted in the appendix hereto, Appendix 3.

The Order of the District of Columbia Court of Appeals denying rehearing and rehearing en banc is reprinted in the appendix, hereto, Appendix 4.

JURISDICTION

Petitioner seeks review of the Judgment and Order of the District of Columbia Court of Appeals, pursuant to Rule 47 of the Rules of the Supreme Court of the United States, 28 U.S.C., 1257.

Judgment was entered 20 November 1989 and the Order denying rehearing was entered 29 January 1990.

DOCKETING

Notice of Appeal was filed with an attempt to docket the appeal with the Clerk of this court on 27 April 1990 in compliance with Federal Civil Judicial Procedure and Rules, 1989 Edition, 28 U.S.C., 2101(c). Advised by Ms. Lorretta Ruffin of the Clerk's office that the Rules had been changed from appeal to petition for writ of certiorari, I was provided with a copy of the pamphlet, "Rules of the Supreme Court of the United States", effective January 1, 1990, together with a sample writ with instructions to file the petition within 21 days. Ms. Ruffin kept the original of the Jurisdictional Statement which was no longer acceptable.

STATUTES INVOLVED

Title 28, United States Code, Judiciary and Judicial Procedure, Article 1257(b), and Article 2072, Rules of Procedure and Evidence, Rule 56 of the Rules of Civil Procedure.

RULE 56, RULES OF CIVIL PROCEDURE

"(g) Affidavits Made in Bad Faith.

Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of reasonable expenses which the filing of affidavits caused the other party to incur, including reasonable attorney's

fees, and any offending party or attorney may be adjudged guilty of contempt."

STATEMENT OF CASE

This appeal involves a breach of contract and tortious breach of contract complaint for a commission and fee.

The Complaint, as filed, was proven by the evidence submitted with the Complaint. Tenants, having executed their rights to purchase, failed to perform on their contract to purchase.

By contract, as submitted, contingent on tenant rights law, the rights to purchase reverted to the third party, whose contract initiated the tenants' rights pursuant to law.

In that the Complaint did not sue for specific performance, as rights to purchase were assigned as plead, rights to a commission and fee were plead as the



property was sold to third parties other than assignee, breaching the agreement of sale and assignment as submitted.

Answer to the Complaint admitted sale. Sale was not to assignee. Trial was necessary to prove tortious behavior caused the breach.

After failing to appear at a pre-trial hearing, almost three years after the breach occurred in May of 1985, where pro se petitioner appeared without counsel who felt the case was too simple for his presence, respondents' counsel, well known to the hearing judge, was allowed to further postpone justice as the trial was rescheduled by nine months.

Respondents' motion for summary judgment deceitfully intended to cover up their tortious breach of contract by introducing an argument that since the tenants executed their rights to purchase pursuant to law and since petitioner's

wholly owned corporation, the assignor, assigned its rights that the petitioner's right to a commission and fee somehow vanished.

Furthermore, the evidence submitted by respondents was held to prove, by opinion of counsel, that respondents' fraudulent behavior restored petitioner's corporation's rights to purchase the original property, which was admittedly divided by respondents.

It was the opinion of counsel that the evidence submitted by respondents proved that the assignment was executory, that respondents violated tenant rights law, and that the evidence impeached the affidavit submitting same.

This opinion by counsel, at hearing on cross motions for summary judgment, was not acceptable to the trial court, who continually pointed out that the issue of specific performance was not plead.

Counsel had a duty by Rule of the court to controvert the arguments and evidence submitted by respondents in opposition to their motion for summary judgment.

The fact that respondents' arguments and additional evidence were irrelevant to the basic issue of breach of contract for commission and fee misled the court into granting summary judgment based on lack of privity of contract by petitioner, Harold I. Pollack ("Pollack").

Pollack's claim had nothing to do with rights that he never had nor claimed.

Respondents tricked and deceived the trial court with their motion for summary judgment, as their clear intentions were to avoid paying the claim no matter the cost.

The fact that the tenants' contract failed for performance and the fact that the property was sold to other than the

agreed upon assignee are the issues as plead, admitted to, and proof of breach of contract with Pollack.

The malicious and fraudulent release of the assignee without notification to all parties that the agreements were void pursuant to the tenants purchase was not relevant to Pollack's claim. It was only relevant to an argument to restore rights to specific performance to Pollack's corporation.

Evidence brought to the hearing which proved that the tenants did not purchase the property in conjunction with a third party, which proved that respondents had required tenants to match original contract, which proved that an extension was never addressed by respondents on tenants' contract, which proved that tenants did not agree to a condominium regime until after sale to wrongful third parties, and which proved that tenants

failed to perform on their contract with respondents was never admitted.

That evidence was only essential to proving that the affidavit was fraudulent and not that the breach was tortious.

The motion for summary judgment was argued to support that contention.

Furthermore, the opposition to the motion for summary judgment controverted the facts claimed in the affidavit by proving the facts in evidence were that the tenants' contract failed for performance.

The breach of contract action was based on sale to the wrong third party, thus breaching agreement to sell to the assignee and did not rely on violation of tenant rights law or assignment, both of which were admitted to in the Complaint.

Counsel and petitioner had agreed that they would introduce this evidence at trial only if the cross-motion was denied.

Evidence submitted with Complaint was sufficient to prove breach of contract for commission and fee as plead.

Counsel and petitioner could not conceive of summary judgment being granted to respondents as the material facts in evidence presented were strongly disputed and summary judgment is inappropriate in that instance.

The mutuality of understanding, consent, and consideration which were tortiously breached were not implied as the contracts were carefully written and came into existence as follows:

Pollack was a real estate agent and real estate developer who prepared a pro forma package on the Property for either development or sale.

The package and marketing greatly increased the value of the property.

Pollack's solely-owned corporation,

Capital Creations, Inc., ("Capital") agreed to purchase the Property.

The contract of sale provided for purchaser to pay Pollack's real estate broker a commission on settlement as Pollack was using broker's office for both sales and syndication.

Pollack arranged a joint venture with a New York developer.

As respondents refused to notify tenants of contract until deposit was cashed, Pollack assigned the contract to Home Partners Corp. ("Home").

The assignment provided for Pollack to receive a fee.

To obviate foul play, Pollack recorded assignment contract of sale among the land records of D.C.

After notification to tenants, tenants organized to purchase property and form a cooperative ownership arrangement.

Property was sold to third parties

without notification to or agreement with Pollack, breaching agreement with Pollack.

Pollack, by counsel, filed Complaint for commission and fee, citing status as a real estate agent at 2., Complaint.

Evidence submitted with Complaint proved third party beneficiary rights to a commission in Contract of Sale, Ex. A, and privity of contract status in the Memorandum Agreement with respondents, Ex. C.

Ex. C, became the operative sales agreement, agreed to by four parties as it modified both the Contract of Sale and Agreement (to assign), Ex. B, attaching those previous sales agreements.

The exhibits were acknowledged by respondents' Answer, " ... The terms of the agreement are evident by the agreement itself. ... ".

The Complaint submitted an additional agreement, Ex. D, which proved that the

tenants executed their rights to purchase. The Complaint cited paragraph 9. of this tenant contract which acknowledged both the rights and obligations of Capital and its assignee in event of non-performance by tenants.

Tenants' contract was entered pursuant to law as provided by contingency to the operative sales agreement, Ex. C.

Tenant performance after they executed their rights to purchase was critical to the assignor and assignee with regard to rights, not to Pollack's right to a commission.

Critical to Pollack's right to the fee provided by the assignment is the fact of the tenants' performance, as the fee was a provision with the assignee and not with the purchaser, were it the tenants.

Tenants had to perform under contract, Ex. D, or rights to purchase would revert to Capital or its assignee, Home, para.

9A, and all notices concerning the tenant rights contract were required to be in writing, para. 5A.

No notices of extensions, modifications to contract, and neither a notice of sale to tenants under this contract nor notice of subsequent release of Home pursuant to tenant rights were ever received by Pollack nor introduced into evidence.

Respondents-admitted sale to third parties after tenant rights expired was proof of breach with Pollack as it defeated Pollack's rights to both a commission in the Contract of Sale and a fee in the assignment agreement.

By agreement with respondents, Pollack was the clearly-expressed procuring cause of sale. Absent any such agreement, Pollack brought Capital, the original purchaser, to the sellers and effected a contract, the Contract of Sale, Ex.A.,

which led to the assignment, which led to the contract with tenants, and which led to sale to third parties.

The facts concerning sale to tenants' assignee pursuant to tenant rights or in violation of same is of no relevance to the claim by Pollack with regard to the commission provision of the contract of sale.

Respondents' astonishment with claim based on sale to the tenants is specious. Not only did respondents require tenants to 'match' the contract of sale explicitly, tenants were also required to match the uncashed deposit in the contract of sale. The matching principle of the statute was intended to protect the tenants and to ensure the tenants got no less than the deal offered third parties.

Although irrelevant to Pollack's claim, respondents grossly violated the specific provision of the law regarding deposits

and the law's intent by forcing the tenants to put up a \$150,000 deposit when the assigned contract, the operative contract recognized in the tenant contract, Ex. D, was cited as the Memorandum Agreement with Pollack, Ex. C, wherein the deposit was reduced to \$75,000 for the assignee.

The Contract of Sale expressly provides, " ... Purchaser agrees to pay ... commission ... "

Pollack, through counsel, complained of tortious breach of contract. Pollack knew that tenants were unable to get financing and couldn't purchase without a developer.

Informing Pollack that tenants were purchasing after their contractual and statutory rights expired, without executing their rights with Home or Capital, is considered deceit with intent to defraud Pollack.

Pollack, as a party to the Memorandum Agreement with respondents was not notified of the actual circumstances of the sale to third parties. Pollack neither released Capital or Home from their obligations nor released Capital's uncashed \$150,000 down payment nor Home's \$75,000 cash deposit.

Pollack's consideration for entering into the Memorandum agreement with respondents was his trust in respondents' duties to comply with law in sale to the tenants or to comply with sale to Home. Respondents breached that trust by sale to others in violation of the Memorandum Agreement, defeating Pollack's right in the commission, Ex. A, and fee, Ex. B.

Breach of contract with Pollack was proved in respondents' Answer to Complaint, admitting property was sold on August 15, 1985.

No additional evidence was necessary.



Pollack had recorded Exs. A & B among the land records of the District of Columbia. Pollack's right to a commission and fee is a matter of public record. Pollack couldn't believe respondents would go to trial. They'd certainly settle before any pre-trial hearing. Their failure to appear at the pre-trial hearing, two-and-one-half years after sale, was just an additional delay tactic to stall paying the commission and fee.

Respondents' motion for summary judgment was astounding. Not only did it provide evidence of tortious behavior, it contained damaging evidence to third parties.

It contained many wrongful statements, evidence irrelevant to the Complaint for commission and fees, misstatements of the facts in evidence, irrelevant citations of law, misrepresentation of the contracts in



evidence, and misrepresentation of the modus operandi of D.C. tenant law.

Controverting the 61 page document was a confusing and difficult task.

The most wrongful facet of respondents' Motion for Summary Judgment was that the 61 pages of cover-up of fraudulent behavior were based on proving issues of law that were admitted in the Complaint.

The breach of contract was based on sale to a third party other than Capital or Home, defeating rights to commission and fees.

The issues of law that influenced the court to dismiss the action were assignment of rights to purchase real estate and tenant rights to purchase real estate which were admitted in the Complaint and evidenced by the Complaint.

Respondents used the assignment issue to prove to the court Pollack had no privity of contract to purchase real



estate, barring Pollack from a breach of contract action for a commission and fee. Astonishing!!!

Furthermore, respondents proved to court that since Home released everything (via a fraudulent document participated in by respondents) that Pollack had to sue Home for a commission due from purchaser when Home didn't purchase. The fraudulent Release wrongfully destroyed all the agreements. Therefore, were the Release valid, end of Complaint!

The release was designed to cover up the fact that reversionary rights to Home were acknowledged by the necessity of the Release to cover up the fact that tenants, unable to perform under their contract, refused to work with Home and entered into other agreements which were of no merit to the case as filed. Sale to anyone other than Home or Capital was sufficient to prove Pollack's breach of contract action.



The Release, was also needed to destroy the land record recordation to convey the property without cloud, was meaningless to the case as filed. It did prove the fraudulent cover-up and that the breach of contract with Pollack was tortious.

Home, unconditionally released by respondents under the guise of tenant rights compliance, was released ultra vires. The fact of the release is the proof of breach of contract with Pollack.

The fact that the Release comprised a Fraud is a different issue of law.

The issue of the inappropriateness of summary judgment when facts are in dispute and citation of the affidavit made in bad faith were addressed in both Pollack's opposition to the motion and in Pollack's cross motion for summary judgment:

"As grounds for denying defendants' Motion for Summary Judgment, plaintiffs state that defendants' motion as particularly set forth in their Memorandum of Points and Authorities is a deceitful attempt to cover up and dismiss the defendants' fraudulent behavior."



Plaintiffs' Motion for Summary Judgment, page 1. Defendants' Motion granted by Order of the Court, Appendix 1, hereto.

"The plaintiff, Pollack, provides the unbroken chain of events required by law to establish his rights to a commission for procuring cause of sale." Statement in Opposition to Points and Authorities in Support of Defendants' Motion for Summary Judgment and in Support of Plaintiffs' Motion for Summary Judgment, page 4. Plaintiffs' Motion denied, Appendix 1, hereto.

Additionally:

"As grounds for this motion, plaintiffs state that Summary Judgment granted pursuant to Rule 56 of the Superior Court - Civil Procedure as a matter of law was made in error as set forth in the Specific Points and Authorities and Concise Statement of Material Facts attached hereto." Motion to Alter the Judgment, page 1. Motion denied, Appendix 2, hereto.

"1. Summary Judgment is an extreme remedy that is appropriate only when there are no material facts in issue and when it is clear that the moving party is entitled to judgment as a matter of law. Sup.Ct.Civ.R. 56(c); Maddox v. Bano, App. D.C. 422 A. 2d 763 (1980); Swann v. Waldman, App. D.C. 465 A. 2d 844 (1983); Lamphier v. Washington Hosp. Center, App. D.C., 524 A. 2d 729 (1987)." Specific Points and Authorities in Support of Motion to Amend the Judgment, page 3. Motion denied, Appendix 2, hereto.

"Plaintiff Pollack beseeches the Court to rule on the evidence in opposition to the persuasions." Answer to Opposition to Motion to Alter the

Judgment, page 4. Motion denied, Appendix 2, hereto.

"As grounds for this motion, plaintiff states that dismissal was based on persuasions of defendants, based on impeachable affidavit of Defendant Gruis, a fraudulent release of plaintiffs' rights in evidence, misstatements of facts taken from the evidence, misrepresentations of the District of Columbia Rental Housing Conversion and Sale Act, and other misconduct as set forth in the Specific Points and Authorities attached hereto." Motion to Vacate Dismissal Order, page 1. Motion denied on May 11, 1990, order yet to be received.

"As grounds for this motion appellant respectfully states that evidence in the record, submitted by Appellee Edward G. Gruis, ... is fraudulent and proves fraud perpetrated on appellants and that rights of appellants were also defeated ultra vires." Motion for Summary Reversal Order, page 1. Motion denied, Appendix 3, hereto.

"SUMMARY ... Appellant Pollack respectfully beseeches this Honorable Court to rule on the evidence submitted by Appellee Edward G. Gruis in juxtaposition to any arguments concerning that evidence." Motion for Summary Reversal Order, page 8. Motion denied, Appendix 3, hereto.

"Grounds for this petition are that issues of exceptional importance have been overlooked as a result of fraud committed upon this Honorable Court by misconduct of counsel for appellees ... as supported by the complete and compelling record of proceedings and appeal." Petition for Rehearing/Hearing en banc and Petition for Appellant's Right to be Heard, page 1.

REASONS FOR GRANTING THE WRIT

Summary judgment is inappropriate where there are material facts in dispute. In this case, not only are the facts in great dispute but also there are issues of law and misconduct.

The trial court clearly erred in determining that Pollack had no right in this action. The decision was based on rights to specific performance with regard to purchase of real property; whereas, the Complaint was for commission and fee.

The court was misled by respondents' arguments with regard to issues in the Complaint. The courts' findings were with regard to rights to purchase real estate, "Pollack has no privity in this case."

Page 36, Transcript of Hearing held on August 19, 1988.

Pollack's lack of privity of contract to purchase real estate is of no moment to Complaint in his behalf.

The court's finding, Transcript of Hearing at bottom of 35 and 36, " ... that their rights were exercised in conjunction with another party. ... the Tenants acting upon the law by forming an association to purchase this property extinguishes any rights that the plaintiffs might have in this case, if they ever had any, with respect to the former owners." is a decision on rights to purchase the property which is of no moment to the Complaint.

MISCONDUCT

Pollack has been excoriated by counsel for respondents for citing fraud from the beginning of his appearance, pro se, and is currently before the trial court with

counsel who filed Complaint. On May 11, 1990, prior to a hearing on Pollack's Motion to Vacate the Judgment, respondents had court release from sanction liability counsel who filed cross-motion for summary judgment, certifying that the respondents' motion was deceitful in its attempt to cover up their fraudulent breach of contract and that the issues of law argued by respondents were irrelevant. Respondents also had court allow Pollack's counsel to withdraw.

INTRINSIC FRAUD

Respondents misrepresented the material fact that Pollack never had any rights to commission or fee from them for breach of contract based on his lack of privity of contract to purchase the Property, with knowledge of the falsity of that fact, for the misrepresentation is outrageous as he



was the agent in Ex. A, respondents were parties to the Memorandum Agreement, Ex. C, in which they consented and agreed to Ex. B, which expressly acknowledged the third party benefits in Ex. A were not to purchase real estate, and as parties had a duty to know that their release of Home breached contract with Pollack, defeating his rights to commission and fee, relying on the fraudulent Release and misrepresentation to unconditionally release Home, with the intent to defeat Pollack's rights by accepting Home's Release which also fraudulently terminated Pollack's rights to commission and fee.

EXTRINSIC FRAUD

Counsel falsely represented to the courts the material fact that Pollack's claim was barred by lack of privity of contract to purchase real estate with full knowledge of its falsity, as it was their duty to know the provisions of the contracts to which their clients were parties, and they used this misrepresentation with intent to deceive the courts, in that the courts relied on this misrepresentation to dismiss the Complaint.



CONCLUSION

Summary judgment should not be allowed to stand when in addition to trial court error, heated dispute as to facts in evidence, citations of irrelevant issues of law, there is a question of misconduct before this Court.

Vacating the dismissal will allow petitioner to have summary judgment reconsidered or go to trial.

There has never been a burden on petitioner to prove fraud or violation of tenant rights to support petitioner's claim for a commission fee.

The burden of proof required was one of breach of contract. Respondents breached the operative sales agreement with Pollack by the ultra vires release of home after rights to purchase reverted to home.

Breach of third party agency rights

in the contract of sale defeated Pollack's right to a commission from the sale.

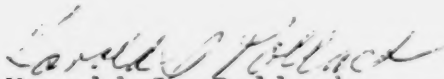
Petitioner, therefore, respectfully requests that this petition be approved, and that writ of certiorari be granted.

Petitioner also respectfully requests that writ includes Pollack's solely-held corporation, Capital, pursuant to Supreme Court Rule 12.4.,

"All parties to the proceeding in the court whose judgment is sought to be reviewed shall be deemed parties in this Court, ... ".

"DATED: Basye, Virginia, May 18, 1990.

Respectfully submitted,


Harold I. Pollack
Pro se
Petitioner

DECISION BELOW

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

HAROLD I. POLLACK,)
 ET AL.,)
 Plaintiffs,)) C.A. No. 7472-86
EDWARD G. GRUIS,) Docketed AUG 25 1988
 ET AL.,)
 Defendants)

O R D E R

Upon consideration of defendants' Motion for Summary Judgment and the Opposition thereto, the plaintiffs' Motion for Summary Judgment and the Opposition thereto, and the arguments of counsel as to both Motions, it is this 23day of August, 1988

ORDERED, that plaintiffs' Motion be and the same is hereby denied in its entirety, and it is

FURTHER ORDERED, that defendants' Motion be and the same is hereby granted in its entirety, and it is

FURTHER ORDERED, that plaintiffs' Complaint be and the same is hereby dismissed with prejudice, and it is

FURTHER ORDERED, that this case be and the same is hereby removed from the August 31, 1988 pre-trial calendar, and it is

FURTHER ORDERED, that this case be and the same is hereby removed from the September 26, 1988 trial calendar.

/s/ H.B. Dixon, Jr.
JUDGE

DECISION BELOW

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

HAROLD I. POLLACK,)
ET AL.,)
Plaintiffs,))
v.) C.A. No. 7472-86
EDWARD G. GRUIS,) Docketed OCT 11 1988
ET AL,)
Defendants)

ORDER

Upon consideration of plaintiffs' Motion to Alter the Judgment and the opposition thereto, it is this 6 day of October, 1988,

ORDERED, that the said Motion be and same hereby is denied.

/s/ H.B. Dixon, Jr.
JUDGE

(signed in chambers)

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DECISION BELOW

DISTRICT OF COLUMBIA
COURT OF APPEALS

FILED NOV 20 1989

No. 88-1362

HAROLD I. POLLACK,
Appellant,
v. CA7472-86

EDWARD G. GRUIS,
Appellee,

BEFORE: Ferren, Steadman, and Farrell,
Associate Judges.

J U D G M E N T

On consideration of appellant's motion for summary reversal, the opposition, and reply thereto, appellee's motion for summary affirmance, and the opposition thereto, it is

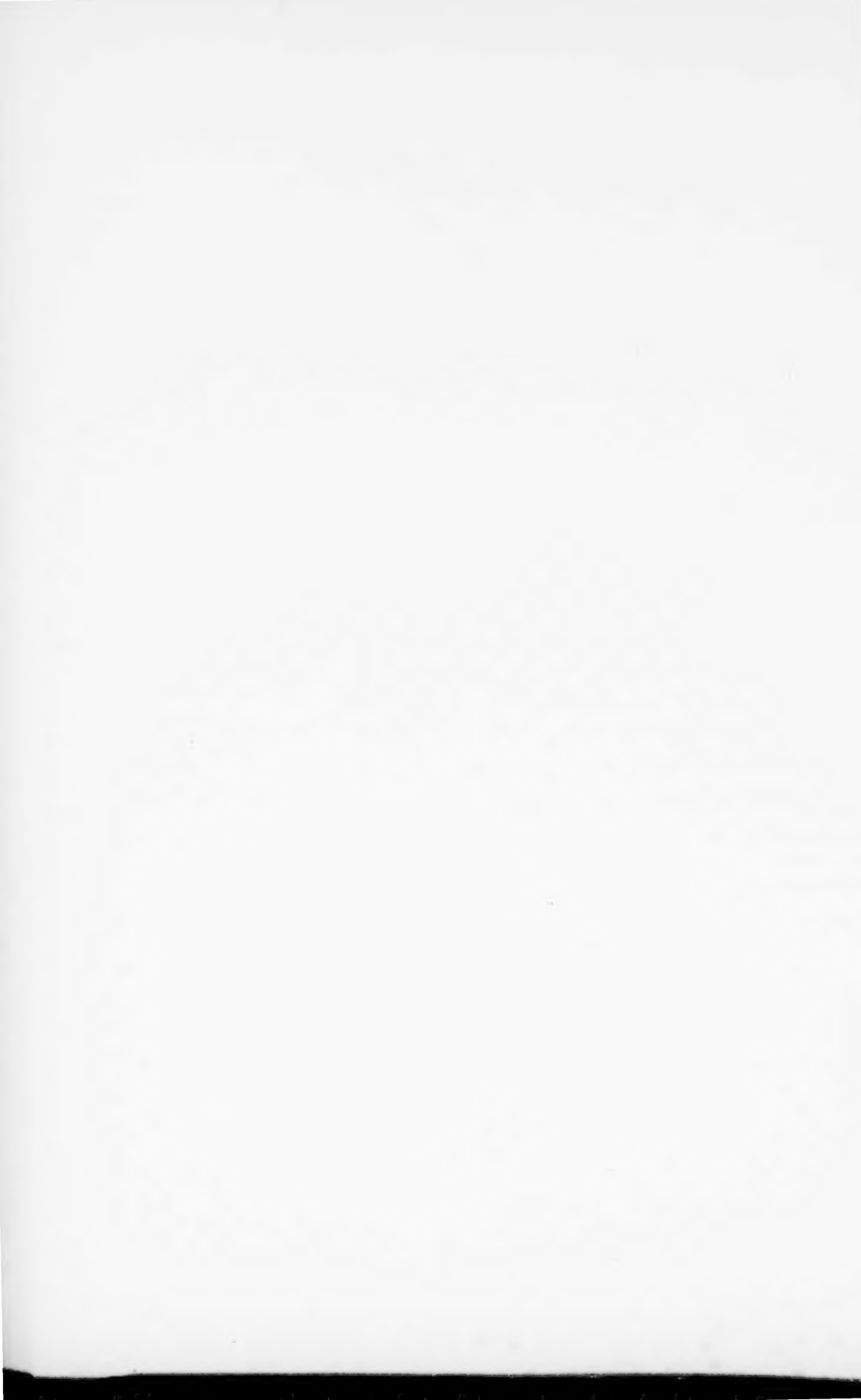
ORDERED that appellant's motion for summary reversal is denied. It is

FURTHER ORDERED that Appellee's motion for summary affirmance is granted. It is

FURTHER ORDERED and ADJUDGED that the judgment on appeal is affirmed.

FOR THE COURT:

/S/ R.B. Hoffman
RICHARD B. HOFFMAN
Clerk of the Court



copies to:

Honorable Herbert B. Dixon, Jr.

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Appendix 3 (2)

iii - 2



Decision Below

**DISTRICT OF COLUMBIA
COURT OF APPEALS**

FILED JAN 29 1990

No. 88-1362

HAROLD I. POLLACK,
Appellant,

v.

F4461-84

EDWARD G. GRUIS,
Appellee,

BEFORE: Rogers, Chief Judge; Newman,
*Ferren, Belson, Terry, *Steadman,
Schwelb, and *Farrell, Associate Judges.

O R D E R

On consideration of appellant's petition
for rehearing and rehearing en banc, it is

ORDERED by the merits division* that the
petition for rehearing is denied; and it
appearing that no judge of this court has
called for a vote on the petition for
rehearing en banc, it is

FURTHER ORDERED that the petition for
rehearing en banc is denied.

PER CURIAM

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Appendix 4-(2)

iv - 2